

Pub. L. 100-640, set out as a note under section 1605 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1609, 1611 of this title.

§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(Added Pub. L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2897.)

REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (a), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1609 of this title.

CHAPTER 99—GENERAL PROVISIONS

Sec.

1631. Transfer to cure want of jurisdiction.

§ 1631. Transfer to cure want of jurisdiction

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the

court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

(Added Pub. L. 97-164, title III, § 301(a), Apr. 2, 1982, 96 Stat. 55.)

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1292 of this title.

PART V—PROCEDURE

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CHAPTER 111—GENERAL PROVISIONS

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AMENDMENTS

1994—Pub. L. 103-465, title III, § 321(b)(1)(B), Dec. 8, 1994, 108 Stat. 4946, added item 1659.
 1990—Pub. L. 101-650, title III, § 313(b), Dec. 1, 1990, 104 Stat. 5115, added item 1658.
 1984—Pub. L. 98-620, title IV, § 401(b), Nov. 8, 1984, 98 Stat. 3357, added item 1657.

CROSS REFERENCES

Criminal procedure, see section 3001 et seq. of Title 18, Crimes and Criminal Procedure.

Removal of cases from State courts, procedure, see section 1446 of this title.

§ 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, § 90, 63 Stat. 102.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 342, 376, 377 (Mar. 3, 1911, ch. 231, §§ 234, 261, 262, 36 Stat. 1156, 1162).

Section consolidates sections 342, 376, and 377 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

Such section 342 provided:

"The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul is a party."

Such section 376 provided:

"Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States."

Such section 377 provided:

"The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

The special provisions of section 342 of title 28, U.S.C., 1940 ed., with reference to writs of prohibition and mandamus, admiralty courts and other courts and officers of the United States were omitted as unnecessary in view of the revised section.

The revised section extends the power to issue writs in aid of jurisdiction, to all courts established by Act of Congress, thus making explicit the right to exercise powers implied from the creation of such courts.

The provisions of section 376 of title 28, U.S.C., 1940 ed., with respect to the powers of a justice or judge in issuing writs of ne exeat were changed and made the basis of subsection (b) of the revised section but the conditions and limitations on the writ of ne exeat were omitted as merely confirmatory of well-settled principles of law.

The provision in section 377 of title 28, U.S.C., 1940 ed., authorizing issuance of writs of scire facias, was omitted in view of rule 81(b) of the Federal Rules of Civil Procedure abolishing such writ. The revised section is expressive of the construction recently placed upon such section by the Supreme Court in *U.S. Alkali Export Assn. v. U.S.*, 65 S.Ct. 1120, 325 U.S. 196, 89 L.Ed. 1554, and *De Beers Consol. Mines v. U.S.*, 65 S.Ct. 1130, 325 U.S. 212, 89 L.Ed. 1566.

1949 ACT

This section corrects a grammatical error in subsection (a) of section 1651 of title 28, U.S.C.

AMENDMENTS

1949—Subsec. (a). Act May 24, 1949, inserted "and" after "jurisdictions".

WRIT OF ERROR

Act Jan. 31, 1928, ch. 14, §2, 45 Stat. 54, as amended Apr. 26, 1928, ch. 440, 45 Stat. 466; June 25, 1948, ch. 646, §23, 62 Stat. 990, provided that: "All Acts of Congress referring to writs of error shall be construed as amended to the extent necessary to substitute appeal for writ of error."

RULES OF THE SUPREME COURT

Procedure on petition for an extraordinary writ, see rule 20, Appendix to this title.

FEDERAL RULES OF CIVIL PROCEDURE

Remedies for seizure of person and property, including arrest, attachment, garnishment, replevin, and sequestration, see rule 64, Appendix to this title.

Writs of coram nobis, coram vobis, audita querela, bills of review, and bills in the nature of bills of review abolished, see rule 60.

Writs of mandamus and scire facias abolished in district courts, see rule 81.

CROSS REFERENCES

Mandamus; statutory provisions giving district courts jurisdiction to grant relief in the nature of writs of mandamus include—

Bridges over navigable waters, removal of, see sections 495 and 519 of Title 33, Navigation and Navigable Waters.

Federal Communications Act and orders of Commission, enforcement of, see sections 11, 401, and 406 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

Federal Power Act, and orders thereunder, enforcement and prevention of violations, see sections 820 and 825m of Title 16, Conservation.

Federal Trade Commission Act, and orders thereunder, enforcement of, see section 49 of Title 15, Commerce and Trade.

Interstate Commerce Act, enforcement of, see section 11703 of Title 49, Transportation.

National Railroad Adjustment Board, enforcement of orders, see section 153 of Title 45, Railroads.

Securities and Public Utilities Holding Companies Acts and orders of Securities and Exchange Commission, enforcement of, see sections 77t, 78u, and 79r of Title 15, Commerce and Trade.

Stockyards Act, adopting by reference section 49 of Title 15, see section 222 of Title 7, Agriculture.

Tariff Act and orders of Tariff Commission, enforcement of, see section 1333 of Title 19, Customs Duties.

Puerto Rico, power of supreme and district courts to grant mandamus, see section 872 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1407, 3202 of this title.

§ 1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §725 (R.S. §721).

"Civil actions" was substituted for "trials at common law" to clarify the meaning of the Rules of Decision Act in the light of the Federal Rules of Civil Procedure. Such Act has been held to apply to suits in equity.

Changes were made in phraseology.

§ 1653. Amendment of pleadings to show jurisdiction

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §399 (Mar. 3, 1911, ch. 231, §274c, as added Mar. 3, 1915, ch. 90, 38 Stat. 956).

Section was extended to permit amendment of all jurisdictional allegations instead of merely allegations of diversity of citizenship as provided by section 399 of title 28, U.S.C., 1940 ed.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Amended and supplemental pleadings, see rules 12 and 15, Appendix to this title.

§ 1654. Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, §91, 63 Stat. 103.)

HISTORICAL REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §394 (Mar. 3, 1911, ch. 231, §272, 36 Stat. 1164).

Words “as, by the rules of the said courts respectively, are permitted to manage and conduct causes therein,” after “counsel,” were omitted as surplusage. The revised section and section 2071 of this title effect no change in the procedure of the Tax Court before which certain accountants may be admitted as counsel for litigants under Rule 2 of the Tax Court.

Changes were made in phraseology.

1949 ACT

This section restores in section 1654 of title 28, U.S.C., language of the original law.

AMENDMENTS

1949—Act May 24, 1949, inserted “as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein”.

§ 1655. Lien enforcement; absent defendants

In an action in a district court to enforce any lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property within the district, where any defendant cannot be served within the State, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a day certain.

Such order shall be served on the absent defendant personally if practicable, wherever found, and also upon the person or persons in possession or charge of such property, if any. Where personal service is not practicable, the order shall be published as the court may direct, not less than once a week for six consecutive weeks.

If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the State, but any adjudication shall, as regards the absent defendant without appearance, affect only the property which is the subject of the action. When a part of the property is within another district, but within the same state, such action may be brought in either district.

Any defendant not so personally notified may, at any time within one year after final judgment, enter his appearance, and thereupon the court shall set aside the judgment and permit such defendant to plead on payment of such costs as the court deems just.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §118 (Mar. 3, 1911, ch. 231, §57, 36 Stat. 1102).

Word “action” was substituted for “suit,” in view of Rule 2 of the Federal Rules of Civil Procedure.

In view of Rule 4(f) of the Federal Rules of Civil Procedure permitting service of process anywhere within the territorial limits of the States, the word “State” was substituted for “district” in the first and third paragraphs.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Process and relief from judgment or order, see rules 4 and 60, Appendix to this title.

§ 1656. Creation of new district or division or transfer of territory; lien enforcement

The creation of a new district or division or the transfer of any territory to another district or division shall not affect or divest any lien theretofore acquired in a district court upon property within such district, division or territory.

To enforce such lien, the clerk of the court in which the same is acquired, upon the request and at the cost of the party desiring the same, shall make a certified copy of the record thereof, which, when filed in the proper court of the district or division in which such property is situated after such creation or transfer shall be evidence in all courts and places equally with the original thereof; and, thereafter like proceedings shall be had thereon, and with the same effect, as though the case or proceeding had been originally instituted in such court.

(June 25, 1948, ch. 646, 62 Stat. 944; Nov. 6, 1978, Pub. L. 95-598, title II, §242, 92 Stat. 2671.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §122 (Mar. 3, 1911, ch. 231, §60, 36 Stat. 1103).

A provision as to creation of a new district or division or transfer of territory before March 3, 1911, was omitted as obsolete.

Words descriptive of the lien were omitted as unnecessary.

Changes were made in phraseology.

AMENDMENTS

1978—Pub. L. 95-598 directed the amendment of section by inserting “or in a bankruptcy court” after “a district court”, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of rule 69 on this section, see note by Advisory Committee under rule 69, Appendix to this title.

§ 1657. Priority of civil actions

(a) Notwithstanding any other provision of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown. For purposes of this subsection, “good cause” is shown if a right under the Constitution of the United States or a Fed-

eral Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

(b) The Judicial Conference of the United States may modify the rules adopted by the courts to determine the order in which civil actions are heard and determined, in order to establish consistency among the judicial circuits.

(Added Pub. L. 98-620, title IV, §401(a), Nov. 8, 1984, 98 Stat. 3356.)

EFFECTIVE DATE

Section 403 of Pub. L. 98-620 provided that: “The amendments made by this subtitle [subtitle A (§§401-403) of title IV of Pub. L. 98-620, enacting this section, amending sections 596, 636, 1364, 2284, and 2349 of this title, sections 437g, 437h, and 687 of Title 2, The Congress, section 552 of Title 5, Government Organization and Employees, sections 8, 136d, 136h, 136n, 136w, 194, 1366, 1600, and 1601 of Title 7, Agriculture, section 1464 of Title 12, Banks and Banking, sections 18a, 21, 45, 57a-1, 78k-1, 687a, 687c, 719h, 1415, 2003, and 2622 of Title 15, Commerce and Trade, sections 1463a, 1910, 3117, and 3168 of Title 16, Conservation, sections 1964 and 1966 of Title 18, Crimes and Criminal Procedure, sections 346a and 348 of Title 21, Food and Drugs, section 618 of Title 22, Foreign Relations and Intercourse, section 640d-3 of Title 25, Indians, sections 3310, 6110, 6363, 7609, 9010, and 9011 of Title 26, Internal Revenue Code, sections 110, 160, 660, and 1303 of Title 29, Labor, section 816 of Title 30, Mineral Lands and Mining, section 2022 [now 4302] of Title 38, Veterans’ Benefits, section 3628 of Title 39, Postal Service, sections 300j-9, 504, 6508, and 8514 of Title 42, The Public Health and Welfare, sections 1062, 1349, 1652, and 2011 of Title 43, Public Lands, sections 355, 745, 1018, and 1205 of Title 45, Railroads, section 402 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, section 2305 of former Title 49, Transportation, section 792a of Title 50, War and National Defense, and sections 462 and 1984 of Title 50, Appendix, repealing sections 1296 and 2647 of this title, section 28 of Title 15, and section 3614 of Title 42, and amending provisions set out as a note under section 2304 of Title 10, Armed Forces] shall not apply to cases pending on the date of the enactment of this subtitle [Nov. 8, 1984].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1821.

§ 1658. Time limitations on the commencement of civil actions arising under Acts of Congress

Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.

(Added Pub. L. 101-650, title III, §313(a), Dec. 1, 1990, 104 Stat. 5114.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in text, is the date of enactment of Pub. L. 101-650, which was approved Dec. 1, 1990.

EFFECTIVE DATE

Section 313(c) of Pub. L. 101-650 provided that: “The amendments made by this section [enacting this section] shall apply with respect to causes of action accruing on or after the date of the enactment of this Act [Dec. 1, 1990].”

§ 1659. Stay of certain actions pending disposition of related proceedings before the United States International Trade Commission

(a) STAY.—In a civil action involving parties that are also parties to a proceeding before the United States International Trade Commission under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission, but only if such request is made within—

(1) 30 days after the party is named as a respondent in the proceeding before the Commission, or

(2) 30 days after the district court action is filed,

whichever is later.

(b) USE OF COMMISSION RECORD.—Notwithstanding section 337(n)(1) of the Tariff Act of 1930, after dissolution of a stay under subsection (a), the record of the proceeding before the United States International Trade Commission shall be transmitted to the district court and shall be admissible in the civil action, subject to such protective order as the district court determines necessary, to the extent permitted under the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

(Added Pub. L. 103-465, title III, §321(b)(1)(A), Dec. 8, 1994, 108 Stat. 4945.)

REFERENCES IN TEXT

Section 337 of the Tariff Act of 1930, referred to in text, is classified to section 1337 of Title 19, Customs Duties.

The Federal Rules of Evidence and the Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

EFFECTIVE DATE

Section applicable with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to the United States [Jan. 1, 1995], or in cases under section 1337 of Title 19 in which no complaint is filed, with respect to investigations initiated under such section on or after such date, see section 322 of Pub. L. 103-465, set out as an Effective Date of 1994 Amendment note under section 1337 of Title 19.

CHAPTER 113—PROCESS

Sec.

- 1691. Seal and teste of process.
- 1692. Process and orders affecting property in different districts.
- 1693. Place of arrest in civil action.
- 1694. Patent infringement action.
- 1695. Stockholder's derivative action.
- 1696. Service in foreign and international litigation.

AMENDMENTS

1964—Pub. L. 88-619, §4(b), Oct. 3, 1964, 78 Stat. 996, added item 1696.

FEDERAL RULES OF CIVIL PROCEDURE

Process, see Rule 4, Appendix to this title.